◦ THE HON'BLE SRI JUSTICE BILAL NAZKI

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AND

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THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

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+ W.A. No. 308 OF 2005

% Dated 28.1.2006

Sri Vishnu Merchants

…. Appellant

Vs.

$ The Mandal Revenue Officer and others

….Respondents

! Counsel for appellant: Mr. Milind G.Gokhale

^Counsel for Respondents: GP for Revenue

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> HEAD NOTE:

? Cases referred

1. AIR 1956 SC 20;
2. AIR 1978 AP 420;
3. AIR 1976 PATNA 355;
4. 1993 Supp. (3) SCC 562;

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE R.SUBHASH REDDY

W.A.NO. 308 OF 2005

Dt. 28.1.2006

Between:

Sri Vishnu Merchants

…Appellant

and

The Mandal Revenue Officer and others

…Respondents

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE R.SUBHASH REDDY

W.A.NO. 308 OF 2005

JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

This is an appeal filed by the writ petitioner against the order dt. 25.11.2004 passed by a learned single Judge of this Court in WP No. 3678 of 2004.

The writ petitioner filed the writ petition challenging a notice dt. 17.2.2004 issued by 1st respondent-Mandal Revenue Officer, Tirumalagiri Mandal. He contended that he was engaged in export business of drugs to Dubai under a scheme known as Duty Entitlement Passbook (DEPB scheme). He was exporting huge drugs namely "Naproxen", the consignment of which was lying in Bombay Nhava Sheva Docks. The consignment was seized, the petitioner was arrested and detained by Director of Revenue Intelligence under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. A show cause notice was issued to him on 12.9.2001 under Section 14 of the Foreign Trade (Development & Regulation) Act, 1992. The allegation against the petitioner was that he exported chalk powder under DEPB scheme by falsely declaring it as

“Naproxen and Rifampicin BP” (bulk drugs). The petitioner gave his explanation. Not satisfied with the explanation offered by the petitioner, a final show cause notice was issued on 25.1.2002 by the Joint Director General of Foreign Trade asking him to explain as to why fiscal penalty should not be imposed against him. The petitioner did not submit his explanation and the Joint Director General of Foreign Trade, Hyderabad passed final order on 19.3.2002 imposing fiscal penalty of Rs.1,30,60,725/- on the petitioner under Section 11 (2) of the Foreign Trade Act, 1992. For recovery of the penalty, District Collector-2nd respondent in the writ petitioner was authorized to recover the penalty from the petitioner. Pursuant to which, Mandal Revenue Revenue Officer passed an order dt. 17.2.2004 directing the petitioner to pay the penalty within seven days from the date of receipt of the notice. This notice was challenged in the writ petition. The petitioner’s licence was also cancelled by order dt. 13.5.2002. This order was also under challenge by way of writ petition being WP No. 12878 of 2002 which was, by order of the Court, tagged to a batch of writ petition along with W.A.No. 1953 of 2001 and they were pending consideration.

The grounds agitated before this Court and before the writ Court are that the impugned notice was issued under Section 25 of the A.P. Revenue Recovery Act, 1864 and the Act did not provide for any recovery with respect to dues or penalties imposed under the Foreign Trade (Development and Regulation) Act, 1992. The imposition of penalty is not under challenge in this Court. Therefore this Court in this writ petition has to decide a limited question as to whether a notice under Section 25 of the A.P. Revenue Recovery Act, 1864 could have been issued or not.

Mandal Revenue Officer-1st respondent filed his counter in which it is stated that a requisition was received by the District Collector-2nd respondent from the Deputy Director General of Foreign Trade-4th respondent for recovery of dues from the petitioner under Foreign Trade Act as contemplated under Section 5 of the Revenue

Recovery Act, 1890 (Central Act 1 of 1890). The amounts were requested to be recovered as arrears of land revenue. The requisition indicated that the petitioner failed to deposit an amount of Rs.1,30,60,725/- towards the penalty imposed under Section 11 (2) of the Foreign Trade (Development and Regulation) Act, 1992. It is further contended in the counter that the Central Act does not prescribe an elaborate procedure specifying in what manner arrears of land revenue have to be recovered. It is only under the State Act that an elaborate procedure is comtemplated and the revenue authorities discharging functions under both the statutes, have necessarily to take resort to the provisions of the State Act for effective recovery of arrears of land revenue.

4th respondent also filed counter in which it is stated that under Section 11 (4) of the Foreign Trade (Development and Regualtion) Act, 1992 any penalty imposed under the Act, if not paid, be recovered as an arrear of land revenue. As per Section 5 of the Revenue Recovery Act, 1890 (Central Act) if any sum is recoverable as an arrear of land revenue by any public officer other than a Collector, on request of such officer, the Collector may proceed to recover the same as an arrear of land revenue. The District Collector of the concerned district where the arrears accrue is the competent authority in respect of realization of Central Government dues. The District Collector has to recover the said amount by duly following the procedure prescribed under the State Act i.e., Andhra Pradesh Revenue Recovery Act, 1864.

So the contention of the respondents was that when the arrears became due to the Central Government, the recovery could be ordered in terms of Section 5 of the Revenue Recovery Act, 1890 (Central Act) and the Collector of the concerned district could recover the dues while exercising the powers under the State Act i.e., Andhra Pradesh Revenue Recovery Act, 1864. This is disputed by the learned counsel for the writ petitioner/appellant and submits that dues to the Central Government could only be recovered in terms of the Revenue Recovery Act, 1890 (Central Act) and not through the State

Act i.e., Andhra Pradesh Revenue Recovery Act, 1864. These contentions can be addressed by having a reference to the relevant provisions. Therefore we proceed to Section 5 of the Revenue Recovery Act, 1890 (Central Act) and it lays down,

> **"SECTION 5 Recovery by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities**
>
> Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land revenue which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself."

Bare perusal of this provision shows that once a matter is referred by the Central Government to the Collector of a particular district, the Collector has to proceed to recover the sum as if it were arrears of land revenue which had accrued in his own district. So by legal fiction, the Andhra Pradesh Revenue Recovery Act, 1864 (State Act) comes into operation. The learned counsel for the writ petitioner/appellant, however, submitted that the Section 5 of the Revenue Recovery Act, 1890 (Central Act) also prescribes that a certificate of amount to be recovered has to be sent to the Collector. This argument was not made before the learned single Judge and the learned counsel for the respondents submits that a new case was being tried to be projected in the writ appeal. Be that as it may, but we do not find that there is any restriction on the Collector to recover the land revenue on a request made by the Public Officer, the certificate has to be issued by the Collector, if a request is made by Collector to another Collector for the purpose of making recovery. In this case there is no dispute that a request by the Deputy Director General of Foreign Trade had been received by the Collector. Therefore, we

have no doubt in our mind that the 2nd respondent-Collector had the power to recover the land revenue in terms of and in accordance with the provisions of the State Act i.e., Andhra Pradesh Revenue Recovery Act, 1864 and the Collector was not required to issue any certificate which is made more clear by the provisions of Section 3 of the Revenue Recovery Act, 1890 (Central Act). Section 3 is reproduced below,

> **"SECTION 3 Recovery of public demands by enforcement of process in other districts than those in which they become payable**
>
> (1) Where an arrear of land-revenue, or a sum recoverable as arrear of land-revenue is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector other district a certificate in the form as nearly as may be of the Schedule, stating-
>
> (a) the name of the defaulter and such other particulars as may be necessary for his identification, and
>
> (b) the amount payable by him and the account on which it is due.
>
> (2) The certificate shall be signed by the Collector making it [or by any officer to whom such Collector may, by order in writing, delegate this duty] and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.
>
> (3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district."

The learned single Judge relied on various judgments being judgment of the Supreme Court reported in *Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay* , judgment of this Court reported in *Somasudarshan Goud Vs. The District Collector* , judgment of Patna High Court reported in *M/s. Mahalaxmi*

Fibres and Industries Ltd. Vs. State of Bihar and judgment of the Supreme Court reported in *Siroman Singh Vs. State of Orissa* . Since there is a direct judgment of the Supreme Court reported in *Siroman Singh Vs. State of Orissa* (4th supra), we do not intend to go to other judgments. The facts briefly as mentioned in the judgment of the Supreme Court were that the appellant before the Supreme Court was carrying on business of manufacture and sale of country liquor. He fell into arrears of excise dues. The appellant belonged to district Singhbhum (Bihar) and had his property and assets in the said district. The Collector Mayaurbhang (Orissa) issued requisition to the Collector Singhbhum (Bihar) under the Recovery Act. On the basis of the requisition sent by Collector, Mayurbhang, (Orissa) proceedings were initiated for recovery of dues from the appellant by the Collector Singhbhum (Bihar). At that stage appellant filed a writ petition before the High Court. The High Court decided the matter against the petitioner and the writ petition was dismissed. The question before the Supreme Court was whether the excise dues under Bihar and Orissa Excise Act could be recovered as arrears of land revenue under the Revenue Recovery Act, 1890. The Supreme Court considered the judgment of the Orissa High Court and upheld it. This question was decided as early as in 1956 by the Constitution Bench of the Supreme Court in a judgment reported in *Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay* (1st supra). The Supreme Court was dealing with the Income Tax Act and under the provisions of the Income Tax Act, the dues could be recovered as land revenue. In para 17 the Supreme Court held,

> "As already stated under Section 46(2), the Collector, on receipt of the certificate from the Income Tax Officer, has to proceed to recover the certified demand as if it were an arrear of land revenue. This means that the Collector of a particular place has to take steps as indicated in the State law relating to the recovery of arrears of land revenue. As already stated, in the State of Bombay there are two statutes regulating the procedure for the recovery of arrears of land revenue according as

the defaulter resides in the city of Bombay or in any other area within the State of Bombay."

For these reasons, we do not find any merit in this appeal which is accordingly dismissed. No costs.

Dt. 28.1.2006 _____

BILAL NAZKI J.

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R.SUBHASH REDDY J.

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